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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 08/120,105      | 09/10/1993  | ANDREAS WINTER       | HOE92F294           | 1612             |

23416 7590 06/10/2002

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EXAMINER

WILSON, DONALD R

ART UNIT

PAPER NUMBER

1713

DATE MAILED: 06/10/2002

37

Please find below and/or attached an Office communication concerning this application or proceeding.

FD

|                        |                        |                     |
|------------------------|------------------------|---------------------|
| <b>Advisory Action</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                        | 08/120,105             | WINTER ET AL.       |
|                        | <b>Examiner</b>        | <b>Art Unit</b>     |
|                        | D. R. Wilson           | 1713                |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 May 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a)  The period for reply expires \_\_\_\_ months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
  5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
  6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
  7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 15,17-19,21,25 and 27-32.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8.  The proposed drawing correction filed on \_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s). 

10.  Other: \_\_\_\_\_.

D. R. Wilson  
Primary Examiner  
Art Unit: 1713

Continuation of 2. NOTE:

The Examiner does not find support for the amendment as is alleged. Specifically, the Examiner does not agree that the peak would have been known to collectively refer to the peaks present in a multimodal DSC curve. To the degree that applicants have referred to ISO 3146 to support their argument, this has not been considered because a copy was not enclosed as was alleged..

Continuation of 5. does NOT place the application in condition for allowance because:

The outstanding rejection to new matter is maintained because the amendment intended to correct this issue has not been entered.

The rejections under 35 U.S.C. § 112, first and second paragraph are maintained for reasons of record. As above, to the degree that applicants argument traversing these rejection relies on ISO 3146, it has not been considered because a copy was not enclosed.

The rejection under 35 U.S.C. § 112, fourth paragraph, is maintained because applicants traversal does not address the merits of the stated rejection.

Applicant's willingness to file a terminal disclaimer to overcome the double patenting rejection is noted. However, as a terminal disclaimer has not been received the rejection is maintained..